

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Jonathan J. Oliver et al.
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EXAMINER: Philip C. Lee
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REQUEST FOR PRE-APPEAL BRIEF CONFERENCE REVIEW

Claim 1 is presented as an exemplary claim for discussion here:

A method of classifying a message transmitted over a network, the method comprising:

maintaining a reputation table in memory, the reputation table including information regarding a plurality of address-domain pairs, each of the plurality of address-domain pairs indicating an IP address and an associated domain of a previously received message, the information regarding each of the plurality of address-domain pairs including one or more classification variables, the one or more classification variables decaying with time;

receiving the message transmitted over the network; and
executing instructions stored in a non-transitory computer readable storage medium to:

determine an associated domain from which the received message is purported to be sent,
identify that the determined domain appears on a whitelist,
determine an IP address corresponding to a device from which the received message was relayed,

associate the determined domain with the IP address to create an address-domain pair for the received message,
classify the received message based on a score assigned to the address-domain pair, the score comprising a ratio of a first classification variable of the address-domain pair to a second classification variable of the address-domain pair as indicated by the reputation table, and
override the whitelist based on the score assigned to the address-domain pair, wherein the received message is classified as spam even though the domain of the received message appears on the whitelist.

Independent claim 1 stands rejected as obvious based on U.S. patent number 7,206,814 (hereinafter *Kirsch*) in view of U.S. patent application number 2008/0040439 (hereinafter *Wang*). To support a conclusion that the claim would have been obvious requires that all the claimed elements were known in the prior art and that one skilled in the art could have combined those elements. See *KSR v. Teleflex*, 127 S.Ct. 1727, 1739 (2007); see also MPEP § 2143. The Applicants submit that the combination of *Kirsch*, *Wang* (and the secondary references *Lalonde*, *Murray*, and *Appleman*) – individually or in any combination – fail to disclose at least ‘overrid[ing] the whitelist based on the score assigned to the address-domain pair, wherein the message is **classified as spam even though the domain of the message appears on the whitelist.**’

Support can be found in the specification. See *e.g.*, *Specification*, 7:14-16; 16:8-9 (describing that “[a] white list can be overridden if the IP address and domain based classification provides compelling evidence that the message was not really sent from the stated sender domain” and a “message may be classified as spam even if the user has that domain white listed, because of the strong evidence that that IP address is not a legitimate one”).

In the action dated March 26, 2010, the Examiner admitted that “*Lalonde*, *Kirsch*, and *Wang* do not teach overriding a whitelist.” *March 26, 2010 Office Action*, 7. The

Examiner has since argued that *Kirsch* teaches the claimed ‘overrid[ing] the whitelist’ at col. 19, lines 7-14 of *Kirsch*, which is reproduced as follows:

In other embodiments, the Inbox as well as the spam folder is also periodically evaluated to determine if the rating of any of the senders of messages in the Inbox has changed. If the sender’s reputation is no longer “good,” and the sender **has not been explicitly whitelisted** by the recipient, the message can be removed to a spam folder and processed accordingly or deleted, depending on the rating an the recipient’s settings.

Kirsch, 19:7-14 (emphasis added). The section of *Kirsch* referenced by the Examiner cannot teach the claimed override of the whitelist, but it explicitly notes that the sender has **not** been whitelisted. As such, there can be no whitelist to override, and the action described cannot teach the claimed whitelist override. *Kirsch* therefore fails to teach the claimed ‘overrid[ing] the whitelist based on the score assigned to the address-domain pair, wherein the message is classified as spam even though the domain of the message appears on the whitelist.’

Wang, Lalonde, Murray, and *Appleman* do not overcome the deficiencies of *Kirsch* in this regard. In light of the foregoing, the Applicants contend that *Kirsch*, *Wang, Lalonde, Murray*, and *Appleman* – individually or in any combination – fail to teach all the limitations of the independent claims. Further, as each dependent claim incorporates each and every element of the claim upon which it depends, the dependent claims are allowable for at least the same reasons.

CONCLUSION

The Applicants have evidenced the failure of *Kirsch, Wang, Lalonde, Murray, and Appleman* – individually or in any combination – to disclose all the limitations of the independent claims, including at least ‘overriding the whitelist based on the score assigned to the address-domain pair, wherein the message is classified as spam even though the domain of the message appears on the whitelist.’

Any claim dependent upon one of the aforementioned independent claims—either directly or via an intermediate dependent claim—is allowable for at least the same reasons as the claim from which it depends. As such, each and every one of the dependent claims of the present application are also in condition for allowance.

As all outstanding rejections are overcome, the Applicants respectfully contend that the application is in condition for allowance. The Examiner is invited to contact the Applicants’ undersigned representative with any questions regarding the present application.

Respectfully submitted,
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